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File No. 0 Enhancement of Penalties/49

Legal Department-

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Subject:—

Opinions under the Enhancement of Penalties

P.6/6

File No. 0 Enhancement of Penalties/49

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C O N T E N T S

Legal Department File No. 0. /~~Enhan~~ Enhancement of Penalties /49.

Sr.No.	R.I./C.No.	Subject	Pages
		Opinions on the enhancement of Penalties -	
1.	G/413 30-5-49	Contravention of Food and Textile Control Order - Acts amending Section 7 of the Essential Supplies (Temporary Powers) Act, 1946- Legal Position arising out of in relation to the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and cattle (Control) (Enhancement of Penalties) Act, 1947.	1-16 (pp. 9 to 14 not coied

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The Essential Supplies (E- Temporary Powers) Act, 1946 (XXIV of 1946) was enacted in pursuance of the powers given by the India (Central Government and Legislature) Act, 1946, which has since been adapted after the Indian Independence Act, 1947. Sub-section (1) of section 2 of the India (Central Government and Legislature) Act, 1946, provided that, notwithstanding anything in the Government of India Act, 1935, the Indian Legislature shall during the period (which for this ~~ex~~ purpose may be held to extend now till the 1st April 1950) have power to make laws with respect to the following matters-

> (a) trade and commerce (whether~~n~~ or not within a province) in, and the productions, supply and distribution of , cotton and woollen textiles, ...foodstuffs (including edible oil seeds and oils), ...; and
>
> x x x
>
> (c) offences against laws with respect to any of the matters mentioned in the preceding paragraphs of this sub-section , ...

ub-section (4) reads as follows:

> "(4) Sub-section (2) of section 107 of the Government of India Act, 1935 (which relates to inconsistency between Federal laws and Provincial laws) ..... shall apply in relation to a law enacted by virtue of this section with respect to any matter, being a matter with respect to which a Province has power to make laws , as if that matter were a ~~matter~~ matter specified in Part II of the Concurrent Legislative List."

But for the enactment of the ~~India~~ India (Central Government and Legislature) Act, 1946, the Province would ~~have~~ have power to make laws relating to trade and commerce in, and the production, supply and distribution of, cotton and woollen textiles and foodstuffs. Sub-section (2) of section 107 of the Government of India Act, 1935 would, therefore, become applicable in relation to the Essential Supplies (Temporary Powers) Act, 1946 . Sub-section (2) of section 107 of the Government of India Act is in the following terms:

> "Where a Provincial law with respect to

> one of the matters enumerated in the Concurren Legislative List contains any provision repugnant to the provisions of an earlier Dominion law or an existing law with respect to that matter, then, if the Provincial law, having been reserved for the consideration of the Governor General, has received the assent of the Governor General, the Provincial law shall in that Province prevail, but nevertheless, the Dominion Legislature may at any time enact further legislation with respect to the same matter:
>
> Provided that no Bill or amendment for making any provision repugnant to any Provincial law, which, having been so reserved, has received the assent of the Governor-General, shall be introduced or moved in the Dominion Legislature without the previous sanction of the Governor General."

The provisions of the Bombay Essential Supplies (Temporary Powers) and the Essential Commodities and Cattle (Control) (Enhancement of ~~Remix~~ Penalties) Act, 1947 (Bom. XXXVf of 1947 were repugnant to the provisions of section 7 of the Esential Cup lies (Temporary Powers) Act, 1946, inasmuch as, whereas the latter made imprisonment optional and prescribed a maximum only of three years, the former raised the maximum to seven years and made imprisonment obligatory which was ordinarily required to be not less than six months. But the Bombay Act was reserved for the Governor General's assent and received it and, therefore, ~~&~~ in accordance with the provisions of sub-section (2) of section 107 of the Government of India Act, 1935, in the Province of Bombay it prevailed. Thereafter , by Act LXIV of 1948 , the Dominion Legislature provided that in respect of contraventions of orders relating to cotton textiles the court shall sentence any person convicted of such contravention e to imprisonment for a term which may ~~mkk~~ extend to three years and may in addition impose a sentence of fine, which meant that the maximum was reduced to three years. Thereafter an Ordinance was passed (Ordinance No. XXXI of 1948) which has now been converted into an Act, whereby in respect of contraventions of orders relating to foodstuffs the following provision was made:

> "The Court shall sentence any persons

> convicted of such contravention e to imprisonment for a term which may extend to three years and may in addition impose a sentence of fine, unless for reasons to be recorded it is of opinion that a sentence of fine only a will meet the ends of justice."

This means that in respect of contracentions of orders relating to foodstuffs not only is the maximum reduced to three years but even imprisonment is no longer obligatory, let alone the minimum imprisonment of six months as contemplated by the Bombay Act XXXVI of 1947, It must be presumed that, as required by the proviso to sub-section (2) of section 107 of the Government of India Act, the previous sanction of the Governor General has been taken before these Central enactments were introduced or moved in the Dominion Legislature. If such sanction was given, having regard to the scheme of sub-section (2) of section 107 of the Government of India Act, 1935, the Dominion Law will now prevail even in the Province of Bombay. The scheme of that sub-section is that where the proposed Provincial law is in conflict with an earlier Dominion law, it is the Governor General's assent which gives authority to the Provincial law in that Province; and conversely where the Governor General gives his sanction under the proviso, he thereby impliedly supersedes the assent which he had earlier given and thus enables the Central law to prevail. Although, therefore, sub-section (2) of section 107 of the Government of India Act, 1935, is content with the provision that the Dominion Legislature may at any time enact further legislation with respect to the same matter and does not in terms say that the earlier Provincial law shall then be void to the extent of its repugnancy with the latest Dominion law, that result would follow from the scheme of the said sub-section, especially of the proviso thereto (cf. also Attorney General for Ontario v. Attorney General for the Dominion, 1896 Appeal Cases p. 348 at p. 366). In my opinion, therefore, it would no longer be

permissible for magistrates in this Province to award imprisonment above three years for any contraventions relating to foodstuffs and cotton textiles and, what is more, there is no obligation upon magistrates to as award imprisonment, e much less a minimum imprisonmen of six months, in cases relating to foodstuffs, but they will be at liberty to punish such contraventions only with fine if they choose to do so..

It appears from the C.S.D. file No. 410/II that, although our law was brought to the notice of the Central Government, the point was not specifically taken that the proposed Central law would vitally affect our law and change the whole scheme of punishments which we had in view for contraventions of orders relating to foodstuffs and textiles, or that it was necessary to retain our scheme of enhanced punishments.

In respect of forfeiture, the Central law seems to be more stringent regarding cotton textiles but has the same effect as the Bombay a law regarding foodstuffs.

Sd/-P.N.Lad
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Remembrancer of Legal Affairs.

U.R. to C.S.D. dated 3-5-49.

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Office of the R.L.A.

A copy of the R.L.A.'s opinion dated 3rd May 1949 is forwarded herewith along with a draft letter to be sent to the Government of India.

Sd/-P.N.Lad
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Remembrancer of Legal Affairs.

U.F. to C.S.D.No. G/413, dated the 30-5-5-49.

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